

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA, : 23-CR-00192 (NRM)
:
-against- :
:
JASON ROBINSON, : United States Courthouse
:
Defendant. : Brooklyn, New York
:
January 8, 2025
11:00 a.m.
:

- - - - - X
REDACTED TRANSCRIPT OF CRIMINAL CAUSE FOR SUPPRESSION HEARING
BEFORE THE HONORABLE NINA R. MORRISON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: BREON PEACE, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

BY: GILBERT REIN, ESQ.
NICHOLAS MOSCOW, ESQ.
Assistant United States Attorneys

For the Defendant: FEDERAL DEFENDERS OF NEW YORK, INC.
One Pierrepont Plaza
Brooklyn, New York 11201

BY: BENJAMIN YASTER, ESQ.

Court Reporter: JAMIE ANN STANTON, RMR, CRR, RPR
225 Cadman Plaza East
Brooklyn, New York 11201
Telephone: (718) 613-2274
E-mail: JamieStanton.edny@gmail.com

Proceedings recorded by computerized stenography. Transcript produced by
Computer-aided Transcription.

1 THE COURT: Any concern on the defense's part if I
2 allow that redaction to stand as it is?

3 MR. YASTER: No objection, Judge.

4 THE COURT: Thank you.

5 Thank you for taking care of that so quickly.

6 MR. REIN: The Government calls Egbert Simon.

7 (Witness takes the stand.)

8 THE COURTROOM DEPUTY: Please raise your right
9 hand.

10 (Witness sworn.)

11 THE WITNESS: Yes.

12 THE COURTROOM DEPUTY: Please state and spell your
13 name for the record.

14 THE WITNESS: My name is Egbert, E-G-B-E-R-T.
15 Last name is Simon, S-I-M-O-N.

16 THE COURT: Good afternoon.

17 You may proceed.

18 **EGBERT SIMON,**

19 called as a witness, having been first duly
20 sworn/affirmed, was examined and testified
21 as follows:

22 DIRECT EXAMINATION BY

23 MR. REIN:

24 Q Good afternoon. Mr. Simon, are you currently employed?

25 A Yes.

1 Q Where do you work currently?

2 A I work for the U.S. Attorney's Office for the Eastern
3 District of New York.

4 Q Approximately how long have you worked with the U.S.
5 Attorney's Office?

6 A Two weeks.

7 Q What is your current title with the U.S. Attorney's
8 Office?

9 A Special Agent.

10 Q Where did you work before working with the U.S.
11 Attorney's Office?

12 A I worked for U.S. Customs and Border Protection.

13 Q How long were you employed by Customs and Border
14 Protection?

15 A Sixteen years.

16 Q I am going to refer to that as CBP, okay?

17 A Yes.

18 Q During your 16 years with CBP, what positions did you
19 hold?

20 A I was an agricultural specialist. Then I became a
21 Customs and Border Protection officer. Then I was a Customs
22 and Border Protection Intel officer. Then I became a
23 Supervisory Customs and Border Protection officer.

24 Q What were your responsibilities as a CBP officer?

25 A As a CBP officer, I was predominantly assigned to the

1 admissibility review office, where I would process incoming
2 passengers for possible immigration violations, conduct
3 notices to appear, and process them for refusals.

4 Q And when you became a Supervisory Customs and Border
5 Protection officer, what were your responsibilities?

6 A I was tasked with managing the daily operations of my
7 direct reports. Making sure if they need any help with any
8 CBP policy or coordination with their host agency that they
9 were detailed with, I would help them with that. I would
10 also help them with coordination with the port of entries
11 for any law enforcement actions that their host agents might
12 have to take.

13 Q What type of training did you receive when you first
14 joined CBP?

15 A When I first started as an agricultural specialist, I
16 was sent down to the USDA training facility to learn about
17 the different laws that the USDA administered and enforced
18 at a port entry.

19 Q Did you receive additional training periodically during
20 your time as a CBP officer?

21 A Yes.

22 Q And what did that consist of?

23 A So when I first started as a CBP officer, I went to the
24 Federal Law Enforcement Training Center, where I went
25 through the CBP officer basic training program that taught

1 us Immigration, Customs, and use of our systems. Then upon
2 my return, I had other training, technical training,
3 enforcement training, and some additional immigration and
4 trade training.

5 Q And during your time at CBP, what geographic area were
6 you assigned to?

7 A I was assigned to the New York AOR. So I was working
8 New York City.

9 Q Did you have the occasion to become involved in
10 different investigations that CBP was conducting during your
11 time at CBP?

12 A Yes.

13 Q And what type did those consist of?

14 A A lot of those were immigration-related cases. We had
15 some Customs-related. And cargo.

16 Q And what was your role in those investigations?

17 A For a lot of those, I would do more of like an
18 investigative -- well, researching the information that we
19 had collected, performing analysis, identifying different
20 patterns, linking other individuals to certain inspections
21 or incidents that might have arrived at the port of entry.

22 Q Did you play any role in the investigation of Jason
23 Robinson in November of 2022 or afterward?

24 A No.

25 Q During your time at CBP, did you become familiar with

1 what are called lookouts?

2 A Yes.

3 Q And how would you describe what a lookout is?

4 A A lookout is -- it's an alert that is within the TECS
5 system and it basically provides the CBP officer, border
6 patrol agent, who is using TECS, information on the
7 individual that they currently have in front of them or that
8 they're researching.

9 Q How are those lookouts generated?

10 A So for CBP, the alerts are generated when you have, for
11 example, an immigration refusal, a seizure, that's -- that's
12 when we create an alert. Or when you have a situation where
13 you develop information from research or from an incident
14 that already occurred, you would create an alert on that.

15 Q And then how were they subsequently used by CBP
16 officers?

17 A So on the primary inspection area, when the officer is
18 processing the traveler, the alert would come up in primary.
19 The officer would then refer that individual to the
20 secondary area that the alert is directing them to send them
21 to.

22 Q And what's the process that CBP personnel go through
23 when they are actually generating the lookout that is later
24 viewable by other officers?

25 A So in order -- you have to basically enter all the

1 identifiers that you have for the individual that you are
2 creating the TECS record for. You are going to create a
3 remarks area. You are going to fill that out with as much
4 information as you can. Your -- your name, your phone
5 number will come up in the -- the alert. And once you
6 submit that, it will notify your supervisor and then your
7 supervisor will have to go into the system to review it and
8 either approve it or disapprove it.

9 Q And what are the steps that are taken to verify
10 information which forms the basis of a lookout?

11 A So the officer creating the lookout will do some type
12 of research on the individual and the information that
13 they're creating the lookout for.

14 Q Does there always have to be a reason behind why a
15 lookout is placed?

16 A Yes.

17 Q And what is the purpose of wanting to inform a primary
18 inspection officer about the information that might be in
19 the lookout?

20 A So you're going to want to alert the primary officer to
21 a situation that, based on the research and analysis, the
22 person that created it feels that -- or knows that the
23 individual falls within CBP's enforcement and the laws that
24 CBP enforces and administers at the border.

25 Q Are there different categories that lookouts can relate

1 to?

2 A Yes.

3 Q And what are those categories?

4 A It's either for Immigration, Customs, or Agriculture.

5 Q Are you familiar with something called the National
6 Targeting Center?

7 A Yes.

8 Q What is that?

9 A The National Targeting Center is like an intelligence
10 hub for frontline personnel.

11 Q And so who works there?

12 A We have -- CBP has Customs and Border Protection
13 officers, border patrol agents, intel analysts, and HSI also
14 sits there and they have liaisons from other agencies.

15 Q Can you describe for us, when a lookout is generated by
16 the National Targeting Center -- well, first, does the
17 National Targeting Center generate lookouts?

18 A Yes.

19 Q When a lookout is generated by the National Targeting
20 Center, how would that impact the assessment of the lookout
21 by CBP officers on the ground at a port?

22 A So when you see a lookout from the NTC -- the National
23 Targeting Center, you're going to -- you're going to feel
24 that they have already done their -- their research and
25 their analysis for creating that record.

1 Q What distinguishes the impact of a lookout from NTC
2 from a lookout generated by another source?

3 A So if it's from NTC, we're going off the basis that
4 there's some type of research or intel behind it. If it's
5 an officer at a port of entry, you're not going to -- it's
6 not going to have the same thought that -- unless that
7 person's from a specialized unit.

8 Q If a CBP officer or other employee places a lookout for
9 a person, can you just describe for us how other officers
10 actually become aware of the lookout?

11 A So other officers will become aware of the lookout
12 either on primary, when they process the passenger, or in
13 secondary, when the passenger has been referred and is being
14 processed by the secondary officer. The secondary officer
15 will query that person in the system.

16 Q If a United States citizen is the subject of a lookout,
17 can that person be denied entry into the United States
18 because of a lookout?

19 A No.

20 Q Could the U.S. citizen have property detained on the
21 basis of a lookout?

22 A Yes.

23 Q Can you describe how?

24 A So based on -- going from the lookout and based on the
25 inspection and what is determined there or found during the

1 course of the inspection, the CBP officer can make
2 determination to detain whatever good, merchandise, or
3 substance is being brought to the United States.

4 Q But if the subject of the lookout is a United States
5 citizen, would that person still be allowed to enter the
6 United States?

7 A Yes.

8 Q Once a CBP officer learns of a lookout, do they have
9 the discretion to disregard it?

10 A On primary, it's a mandatory referral.

11 THE COURT: Sorry, let me ask one clarifying
12 question.

13 When you said that if there's a lookout, the
14 citizen could have property detained because of a referral,
15 is there any limitation on which property can be retained or
16 once there's a lookout, any property that they're bringing
17 with them into that port of entry could be detained based on
18 the lookout?

19 THE WITNESS: Just to clarify, the property is not
20 detained specifically because of the lookout. It's based on
21 the inspection and what the officer finds during the course
22 of the inspection.

23 THE COURT: Okay. Understood.

24 Q So just to clarify, if a United States citizen is found
25 in possession of contraband, what might happen in that

1 situation with regard to contraband?

2 A Depending on the type of contraband that it is, it can
3 either be detained for further review or analysis or, like I
4 said, depending what it is, it can be seized.

5 Q And in those situations what happens to the actual U.S.
6 citizen if they are not otherwise arrested?

7 A They are given a receipt for the detention and they're
8 allowed to leave.

9 Q And once a CBP officer learns of a lookout, do they
10 have the discretion to disregard it?

11 A The CBP officer in the primary area does not have the
12 ability to disregard, no, the alert.

13 Q In what types of circumstances might a lookout be
14 placed on a particular person?

15 A You -- so if, for example, if you have an individual
16 that's refused entry, an alert will be created. An
17 individual that is served with a notice to appear before an
18 immigration judge will have one created. A traveler who,
19 for example, has narcotics seized will have an alert
20 created.

21 During the course of an inspection, if you develop
22 information possibly connecting another individual to some
23 type of activity that conflicts with the laws that CBP
24 administers or enforces at the border, you can create an
25 alert based off that as well.

1 Q Is the information upon which a lookout is based
2 refreshed periodically or updated?

3 A Yes.

4 Q And how so?

5 A So you have situations where you can be conducting
6 further research and develop other information. So you
7 would want to update your alert to reflect that. Or you may
8 have situations where the individual is inspected based on
9 your alert and then information is developed from that
10 inspection.

11 Q Is there a CBP guidance about how long a lookout should
12 remain active?

13 A Yes.

14 Q And what is that?

15 A Guidance was issued that for CBP officers in the field,
16 the TECS record would only be valid for one year.

17 Q How is that guidance affected by whether or not a
18 lookout was generated by the NTC?

19 A So because the -- the officers who are working out of
20 the NTC have a different, I want to say, mission, mission
21 set, with what they do that doesn't affect them,
22 specifically.

23 Q What types of actions might a lookout direct a CBP
24 officer who encounters a subject of a lookout to take?

25 A So if it's on primary, they would refer the individual

1 to secondary. In secondary, the officer who is processing
2 that person will look at their lookout and use it as a guide
3 to direct their inspection. They might call the record
4 owner to see if they can get more information. But they
5 will conduct their inspection based off of that.

6 Q After a CBP officer encounters someone who is the
7 subject of a lookout, might they further update the lookout
8 in the TECS system?

9 A Yes.

10 Q And for what purpose would they update it?

11 A If new information is discovered during the inspection,
12 they might want to update the record. If the inspection is
13 negative, they might want to update that record to reflect
14 that. If there's a -- like a -- it's like a seizure, based
15 off of that inspection, they might want to record that in
16 that alert.

17 Q What steps, if any, might a CBP officer take to update
18 a record so that a person isn't continuously stopped if
19 they've already been the subject a secondary inspection?

20 A So when you have the alert, the officer who conducts
21 the secondary, when they do their inspection and close it
22 out in the system, that generates a notification to the
23 record owner. It will either say positive or negative. And
24 then based off of that, the record owner can look at that
25 and make a determination whether or not further inspections

1 are necessary.

2 Q As part of the CBP's mission, is it concerned with
3 preventing the flow of contraband into the country?

4 A Yes.

5 Q Does that include child sexual abuse material?

6 A Yes.

7 MR. REIN: One moment, Judge.

8 Nothing further, Judge.

9 THE COURT: Let me ask one question before you sit
10 down. I may have missed this in your credentials, but were
11 you ever detailed at NTC?

12 THE WITNESS: I was not detailed to NTC, but I've
13 been to NTC, you know, a number of times.

14 THE COURT: Understood.

15 And is NTC part of CBP? Is it a division of CBP?
16 What's the institutional relationship between the two?

17 THE WITNESS: So NTC is part of CBP. Like I said,
18 it is like our intelligence hub for field personnel, so it's
19 kind of like a standalone, but it is part of CBP.

20 THE COURT: Okay, thank you.

21 MR. YASTER: May I inquire?

22 THE COURT: Yes.

23 CROSS-EXAMINATION BY

24 MR. YASTER:

25 Q Good afternoon, Agent Simon.

1 A Good afternoon.

2 Q My name is is Ben Yaster. I am a lawyer for Jason
3 Robinson. Welcome to the district. I have just a few
4 questions.

5 I just want to walk through again the process for
6 creating or entering a lookout. I believe you said on
7 direct examination that one of the first things you would do
8 in creating a lookout is you would enter the identifying
9 information for the person who is the subject of the
10 lookout; is that right?

11 A That's correct.

12 Q I believe that you then said that you would fill out
13 the remarks section with as much information as you can; is
14 that right?

15 A That's correct.

16 Q Did you receive training about how to fill out the
17 remarks section in a lookout?

18 A So the Federal Law Enforcement Training Center, they do
19 teach you how to use TECS. And they do teach you how to
20 create that, the records.

21 Q In the remarks section, is there a character or a word
22 maximum for how much information can be provided?

23 A Yes. It won't let you go over after a certain amount.

24 Q Do you remember what that amount was?

25 A I do not.

1 Q The person who is creating the lookout, they can add as
2 much information as they think is appropriate up to whatever
3 that limit is, right?

4 A That's correct.

5 Q And then after the lookout remarks section is
6 completed, am I right that the lookout is then taken to a
7 supervisor who signs off on it?

8 A So after you fill out all the -- whatever you can fill
9 out in there, it will be -- and you -- you complete it, the
10 supervisor gets a notification in the system.

11 Q Okay. And in your experience, does the supervisor do
12 much editing of a lookout before they sign off on it?

13 A I don't believe you can edit it. It's either approved
14 or disapproved. You would have to -- if you had an issue --
15 in my experience, if I had -- whenever I had issues with
16 TECS records created by my direct reports, I've called them
17 up and said, I need you to edit this because I don't
18 understand this, you need to explain it to me.

19 Q Have you ever, in your experience as a supervisor,
20 rejected a lookout for having too much information in the
21 remarks section?

22 A No.

23 Q I am going to move on.

24 You said on direct examination that a U.S. citizen
25 who has a lookout cannot be denied entry into the United

1 States on the basis of a lookout, right?

2 I can rephrase if that was unclear.

3 A Yeah, can you?

4 Q Let me say it again.

5 So if a U.S. citizen has a lookout and they come
6 to Customs at an airport, they cannot be denied entry into
7 the United States because of the lookout; am I right?

8 A A bona fide U.S. citizen cannot be denied entry into
9 the United States.

10 Q Right. However, am I right that if there is a lookout,
11 at primary inspection, they may be referred to secondary
12 inspection before they are ultimately admitted?

13 A That's correct.

14 Q I want to ask about the difference between detaining
15 property and seizing property.

16 Am I right that at CBP there is a distinction
17 between the two, that detention of property and seizure of
18 property mean different things?

19 A Yes.

20 Q What's the difference?

21 A So for a detention, CBP would, for example, if you're
22 bringing in jewelry and you claim the jewelry would be \$60.
23 For example, we have people coming from Europe who bring
24 these high-value purses. They buy it over in Europe because
25 they don't have to pay the taxes. They bring it to the

1 United States and not declare it. When they get stopped and
2 inspected, they'll say the purse is worth \$50, but it's a
3 Louis Vuitton bag that we see online, it's worth \$2,000. So
4 we'll detain the bag and send it for appraisal. The
5 specialist who does the appraisal will do what they do and
6 they'll give us the appraisal value of that item. And then
7 we will contact the owner of the item, notify them, hey,
8 listen, the CBP appraisal said that this bag is worth
9 such-and-such value, you under-declared, there is a duty on
10 this. Would you like to come in to pay the duty? And if
11 they pay, when they pay it, they get their property back.

12 Q What happens if they don't pay it, in that example?

13 A Then they -- that goes through, I believe, our Fines
14 Forfeitures and Penalties division.

15 Q Let me try to specify. In that example, if the duty is
16 not paid, does the property move from being detained to
17 being seized?

18 MR. REIN: Objection, Judge. This is outside the
19 scope of his testimony on direct. And it's also just
20 outside the scope of the hearing. It's not based upon his
21 personal knowledge.

22 THE COURT: So let me ask Mr. Yaster to clarify.

23 Which portion of the direct do you think this
24 relates to?

25 MR. YASTER: So I believe it refers to the direct

1 where, on direct, Agent Simon said that after a property is
2 detained, it can be seized. I am trying to tease out what
3 the distinction is between the detention and the seizure.
4 I'm trying to do it through this example, but I can try to
5 ask --

6 THE COURT: I think it is an example the witness
7 offered, so I think we are getting outside the scope because
8 the witness offered it. Why don't you inquire about this
9 difference and then we'll move on.

10 MR. YASTER: Thank you.

11 Q Am I right that the difference between a detention and
12 a seizure is this: That a detention is a temporary taking
13 of the property for purposes of inspection or examination,
14 but then a seizure would be a permanent or longer term
15 taking?

16 A Yes.

17 Q Okay, thank you.

18 THE COURT: And in the example that you just gave
19 regarding the handbag, which I know is not this case, but
20 where it's sent for an appraisal, CBP would hold on to that
21 bag even while the traveler leaves the airport for as long
22 as it takes to do the appraisal and notify the traveler
23 whether they need to pay a duty or not; is that right?

24 THE WITNESS: Yes.

25 THE COURT: Okay, thank you.

1 Q I want to ask a couple of questions about updating TECS
2 records or updating lookouts.

3 Am I correct that there is CBP guidance that a
4 lookout should last for one year?

5 A Yes.

6 Q And that after that year, for the lookout to still be
7 active, it has to be renewed or updated; is that correct?

8 A Yes.

9 Q So let's say a lookout was entered in November of 2019,
10 right? Under the guidance, it would expect to be expired in
11 November of 2020, right?

12 A As I explained, when the guidance came out, it informed
13 frontline officers that the TECS record, the alerts, would
14 only be for a year. So in the system, CBP took steps where
15 officers could only create the TECS record for a year. But
16 if you're in specific -- if you're in specific groups or --
17 or offices, for example, the NTC, they have a different
18 directive. So when they create TECS records, the same
19 restrictions that, for example, I would have for when I
20 create a TECS record for only a year, would not apply to
21 them.

22 Q So am I correct, then, that the guidance, this one-year
23 guidance for a lookout alert, are you saying it doesn't
24 apply to NTC lookouts?

25 A The NTC lookouts, because of what they do in their

1 mission, their specific mission tasking, it was not applied
2 to them within that guidance.

3 Q So just to make sure I understand. If a lookout is
4 created by a CBP officer not associated with NTC, that alert
5 would, under the guidance, last for one year, right?

6 A Yes. It would be automatically created for one year.

7 Q One year. And then that alert would only continue
8 after that one year if the lookout is updated; is that
9 right?

10 A Yes.

11 Q However, if a lookout is created by NTC -- sorry, let
12 me finish my question. If a lookout is created by NTC, that
13 one-year restriction on the alert doesn't apply; is that
14 right?

15 A Yes.

16 Q And this is something that you learned in the course of
17 your training while you were at CBP; is that right?

18 A Training and experience.

19 Q Training and experience. Thank you.

20 And then last question. During your direct, you
21 talked about a lookout record owner. And I believe what you
22 said was that after the subject of a lookout has been
23 encountered, the record owner is notified; is that right?

24 A Yes.

25 Q Just so I'm clear, the record owner is the person who

1 entered or created the lookout; is that right?

2 A Yes.

3 MR. YASTER: No further questions.

4 THE COURT: Any redirect?

5 MR. REIN: No, Judge. Thank you.

6 THE COURT: Okay, thank you.

7 Thank you. You are excused. And let me also
8 welcome you to the district. I should have done that
9 initially. Good to see you here.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 MR. REIN: Your Honor, we call our final witness,
13 that's Special Agent Stepien.

14 (Witness takes the stand.)

15 THE COURTROOM DEPUTY: Please raise your right
16 hand.

17 (Witness sworn.)

18 THE WITNESS: I do.

19 THE COURTROOM DEPUTY: Please state and spell your
20 name for the record.

21 THE WITNESS: My first name is Richard,
22 R-I-C-H-A-R-D. Last name, Stepien, S-T-E-P-I-E-N.

23 THE COURT: Good afternoon.

24 THE WITNESS: Good afternoon.

25 **RICHARD STEPIEN,**

1 us the rough by Friday, just in case you all want to start
2 looking at it over the weekend and we will get the final by
3 Monday so you can check it over again.

4 Mr. Robinson, I will leave it to you if you want
5 to be here in person for argument. Otherwise we will
6 arrange for a video feed or a phone link so you can listen
7 in.

8 Thank you all. Take care.

9 (Matter concluded.)

10
11 * * * * *

12
13 I certify that the foregoing is a correct transcript from
14 the record of proceedings in the above-entitled matter.

15 /s/ Jamie Ann Stanton

January, 8, 2025

16 JAMIE ANN STANTON

DATE